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UNCLAS SECTION 01 OF 04 HANOI 000261

SIPDIS

STATE FOR EB/OMA, EAP/MLS AND EAP/EP  
TREASURY FOR CAROL CARNES AND SUSAN CHUN  
STATE PASS USTR DAVID BISBEE  
TREASURY PASS FRB SAN FRANCISCO/TERESA CURRAN  
SINGAPORE FOR SUSAN BAKER

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TAGS: [EFIN](#) [ECON](#) [ETRD](#) [EINV](#) [VM](#)  
SUBJECT: ABN-AMRO TRIES TO SETTLE CASE, CITIBANK COULD BE NEXT

REF: A) 06 HANOI 2314 B) 06 HANOI 2995

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11. (SBU) Summary: Officials of the Dutch Bank ABN-AMR provided an update on the bank's ordeal in trying to settle criminal and civil charges regarding allegedly unauthorized foreign exchange deals with the state-owned Industrial and Commercial Bank (Incombank) of Vietnam (Ref B). The ABN-AMRO representatives stressed that even though the bank did pay USD 4.5 million in order to settle the dispute, the bank in no way admits any criminal behavior or wrongdoing. They maintain that pressure from the Vietnamese government and police, the detentions of ABN-AMRO employees in jail and the prospect of additional jailings forced the company into a position where it felt it had no option but to pay. The bank continues to engage with the authorities in order to close the criminal case, drop the civil case against ABN-AMRO and release the four employees who remain under house arrest. ABN-AMRO intends to continue operations in Vietnam, but notes the experience as a cautionary tale of doing business in this emerging market. In the meantime, Citigroup is trying to resist increasing pressure also to pay to settle. End Summary.

Case Update  
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12. (SBU) ABN-AMRO Corporate Executive Vice President Robert Davis, Country Representative Lindsey Michael Haman and Senior Vice President of the ABN-AMRO Regional Security Office for Asia Hans Melchior met with EconCouns and Econoff on February 6 to discuss the bank's ordeal in dealing with Vietnamese authorities over the case of the allegedly unauthorized foreign exchange deals with Incombank that went bad (reftels). They confirmed the press reports that the bank paid USD 4.5 million to Government of Vietnam accounts in November 2006 in order to settle the criminal and civil charges filed against them earlier last year. While the two ABN-AMRO employees in jail were transferred to house arrest in December 2006, the criminal charges, and the civil suit by Incombank that has been suspended until the criminal charges are resolved, have not been dropped. Davis made clear that ABN-AMRO concedes no criminal behavior and will continue to work with the GVN to resolve the case. ABN-AMRO does admit that the foreign exchange transactions in

dispute (Ref A) could be considered technical violations under the unclear and previously unenforced regulations (namely, regulation 101) issued by the SBV. He asserted, however, that lax procedures do not constitute criminal behavior, and ABN-AMRO will continue to fight those charges.

#### Risks of doing business in Vietnam

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13. (SBU) Davis noted that "this kind of risk is endemic in emerging markets" and said that ABN-AMRO remains committed to operating in Vietnam, if they are able to do so, because there are still significant opportunities for the bank here. Nevertheless, he cautioned that two aspects of the investigation will have serious implications for other banks and investors as a whole. First, the fact that a "loss of state funds" is considered a crime (and in ABN-AMRO's case, the main crime with which the bank is charged) is a problem for any company dealing with a state-owned enterprise, he stated. If regular business transactions which result in a loss for a state-owned company can be considered criminal acts -- entangling both the state-owned company that "loses" the money and the private company that "takes" it -- then private sector companies have no incentive to do any business with state-owned firms. (Note: Davis added as an aside that for this reason and others he did not expect any international bank to have the slightest interest in buying a share of the state-owned commercial banks scheduled to equitize, a Vietnamese version of partial privatization, later this year. End note.)

14. (SBU) Second, the Ministry of Public Security (MPS) and State Bank of Vietnam (SBV) interpretation of what constitutes a foreign exchange contract is extremely problematic for future foreign exchange transactions, Davis continued. MPS, in order to demonstrate a "crime" occurred, declared that oral contracts between traders over the phone are not valid, and that only after the traders write up a paper contract and sign it is the transaction

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legal. This interpretation means that a trader in Vietnam need only wait a few hours to see if they profited from the oral agreement and sign (or refuse to sign) the written contract depending on the outcome. Thus, given the pace of the foreign exchange market and its transaction speed, and given that oral contracts are standard practice in foreign exchange markets the world over, the declaration of oral contracts as non-binding in foreign exchange transactions essentially prevents those transactions from taking place in Vietnam, Davis explained.

15. (SBU) As a result, ABN-AMRO no longer conducts these trades with Vietnamese institutions. According to Davis, the SBV is preparing to clarify this issue with new decrees that will also demystify the conflicting guidance on how to register foreign exchange traders (Ref A). Additionally, the Bank Working Group of the Vietnam Business Forum, a group of private sector companies that holds a regular dialogue with the GVN on issues of concern, has already taken up the problem of foreign exchange contracts and the need for greater regulatory clarification through their channels of communication with the GVN.

16. (SBU) Finally, Davis noted that the overall politicization of the case and the lack of rule of law (violation of arrested citizens' rights, interference in the SBV investigation, improper involvement of the state-owned company in the investigation, etc.) has reduced confidence in Vietnam's investment climate. While companies can expect some difficulties in these types of emerging markets, the lack of rule of law in this case was extreme, said Davis. The two Vietnamese-national ABN-AMRO employees jailed for nine months as part of the investigation were denied constitutionally-guaranteed family visitation rights and were repeatedly interrogated without their lawyers present. In his view, the SBV investigation was clearly hampered by the police (Ref B), and the investigation itself was conducted in a way that it could only have one outcome: ABN-AMRO paid.

No help from the PM

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17. (SBU) Davis commented that though ABN-AMRO does not know what details the Prime Minister knew about the case, it does know that both the Dutch Government and the Ministry of Public Security briefed his office separately on the case and the conduct of the investigation. He thought that the international media attention (notably editorials in the Wall Street Journal), pressure from the Dutch Government, the looming vote in the United States on Permanent Normalized Trade Relations, an unresolved WTO accession and the prospect of 20 heads of state attending the November 2006 Asia Pacific Economic Cooperation (APEC) Summit in Hanoi might have worked in ABN-AMRO's favor. This did not happen. The Prime Minister's office did not intervene in the case to restrain the behavior of the Ministry of Public Security (MPS) and its investigative unit or in any way assist ABN-AMRO or its employees, Vietnamese or foreign. Country Director Haman added that at several stages in the investigation, there were "face-saving opportunities" where intervention would not have been a total loss to the GVN: e.g., ABN-AMRO offered to give Incombank the approximately USD 1 million they made as a profit from their transactions, the SBV originally drafted a report that found regulatory violations but no criminal activity, etc. Neither these "outs" nor the collective international pressure and scrutiny changed the behavior of the MPS or the direction from the Prime Minister.

Police relationship with Incombank  
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18. (SBU) A second complication in the investigation, Davis indicated, was the peculiar relationship between Incombank and the C15 unit of the MPS. During official investigative meetings between ABN-AMRO staff and C15 police, an Incombank representative sat in on the discussions and question and answer sessions. This privilege was not reciprocated to ABN-AMRO during talks between the C15 unit and Incombank. Furthermore, added Haman, a large part of the Incombank legal department consists of former C15 unit police officers recently transferred to Incombank to learn more about market practices and economic policy.

Motivation for case not clear  
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19. (SBU) The ABN-AMRO representatives characterized MPS and GVN motivations and decision-making as completely obscure throughout the investigation. Haman said it was like looking into a "black box." The company still does not understand what motivated the direction of the case. ABN-AMRO would not speculate on whether MPS was acting out of obligation to relationships with people at Incombank (Ref A) (which reportedly pressured MPS at senior levels for a favorable outcome), at the direction of the Party or for their own financial gain. ABN-AMRO representatives said they had no idea if the police received a portion of the USD 4.5 million, but they did confirm the bank transferred funds to MPS-controlled accounts.

110. (SBU) ABN-AMRO representatives noted that they repeatedly had to explain the nature of the foreign exchange market, the ways in which transactions balance out and the means by which profit is made. They even created a "dummy guide," said Melchior, to try to demonstrate to the Vietnamese police how these money flows operated.

Not Guilty  
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111. (SBU) Above all, Davis stressed that ABN-AMRO's main message is that that the USD 4.5 million payment is in no way an admission of guilt or criminal wrongdoing. He said that in ABN-AMRO's view, it is a victim. It concluded the only way to resolve the case was to pay. It wanted to avoid the prospect of three more employee arrests, in addition to the two in jail and the two under house arrest. These threats, coupled with directives from MPS that payment from ABN-AMRO would eliminate the "criminality" of the case, prompted ABN-AMRO to finally agree to transfer USD 4.5 million to two separate MPS-controlled accounts, one at the State Treasury and

one at Vietcombank. ABN-AMRO will continue to fight to have the criminal and civil charges dismissed and the four employees still under house arrest released. Davis, Haman, and Melchior all emphasized this "intimidation and the pressure" was the only reason ABN-AMRO agreed to pay, and that the company absolutely denies any criminal wrongdoing.

Is Citibank next?

¶12. (SBU) On February 9, Citigroup Country Officer Charly Madan met with the Ambassador to inform him of increasing pressure for it to pay GVN coffers as well in order to settle claims against his bank's involvement in also processing some alleged unauthorized foreign exchange trades with Incombank. Like ABN-AMRO's Davis, Madan too criticized the government's use of regulation 101 as the grounds for the case, noting that none of the banks--foreign, domestic or state-owned--had adhered to that rule, which in any case was designed to deal with the aftermath of the Asian financial crisis, not these trades.

¶13. (SBU) Madan said the government was looking for Citibank to pay USD 131,000, a figure reached by "unwinding the transactions." He said if the government were to be consistent and unwind all of the deals from the period of 1997 to August 2006, there should be a net payment to Citibank of USD one-half million. He also distinguished Citigroup's relatively smaller role in the Incombank case, noting it had only processed 17 trades which were valued at less than USD 20 million. Separately, Madan noted how Citibank has been a virtual training college for the SBV. It had just provided a 30-person team to train SBV employees in such matters as due diligence and on technical matters on trading issues. Citibank wanted to maintain this positive relationship with Vietnam and continue to expand its business.

¶14. (SBU) Given ABN-AMRO's experience, Madan is concerned that if Citigroup does not pay the amount requested, the police will start harassing its employees. He was also concerned that the idea of unwinding transactions as a solution was opening a Pandora's box. Madan hoped that Citigroup would be able to reach some face-saving arrangement with the authorities that would not require the payment of any funds. Madan agreed to stay in touch on progress with this case and would inform us if there was any harassment.

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